

**Tom Duong, d/b/a TD Janitorial Services and Service Employees International Union Local 2028, Service Employees International Union, AFL-CIO.** Case 21-CA-31258

April 30, 1998

# SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND LIEBMAN

On September 3, 1997, the National Labor Relations Board issued an unpublished Order adopting, in the absence of exceptions, the decision of the administrative law judge ordering the Respondent, Tom Duong, d/b/a TD Janitorial Services, to make whole Rosario Ramirez for any losses of earnings and benefits resulting from her discharge in violation of the National Labor Relations Act.

A controversy having arisen over the amount of backpay due the discriminatee, on February 12, 1998, the Regional Director for Region 21 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification,<sup>1</sup> the Respondent failed to file an answer.

On March 30, 1998, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On April 1, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

<sup>1</sup> Although a copy of the compliance specification served on the Respondent on February 12, 1998, by certified mail was returned to the Regional Director as being unclaimed, failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

## Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatee is as stated in the compliance specification and we will order payment by the Respondent of these amounts to the discriminatee, plus interest accrued on said amounts to the date of payment.

## ORDER

The National Labor Relations Board orders that the Respondent, Tom Duong, d/b/a TD Janitorial Services, San Diego, California, its officers, agents, successors, and assigns, shall make whole Rosario Ramirez by paying her \$170, plus interest and minus tax withholdings required by Federal and state laws.